IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 11893 OF 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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DIVISIONAL MANAGER, WESTERN RAILWAY - Petitioner(s)
Versus
GOVINDBHAI SOMABHAI - Respondent(s)

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Appearance :
Shri Mukesh Patel for Petitioner(s).
Shri Hasmukh Thakker for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 10/07/2007

ORAL JUDGMENT

The Divisional Railway Manager, being aggrieved by the award dated 29th February, 1999, passed by the learned Member,

Industrial Tribunal (Central), Vadodara in Reference No. I.T. (Central) 3 of 1996, is before this Court.

2. The short facts necessary for disposal of the present Writ Application are that the respondent-workman appeared before the learned Industrial Tribunal somewhere in the year 1996 with a submission that he was engaged and appointed by the Bridge Inspector on 21st December, 1979 and worked upto 29th December, 1982 and could not continue to work as he was orally removed. His further case was that he was called daily, but, no work was assigned to him. He also challenged the removal/termination submitting, *inter alia*, that juniors to him were retained in service and the policy of last-cum-first go was not followed.

2.1 The present petitioner appeared before the learned Industrial Tribunal and submitted that the workman was not removed from service, but, he left of his own, engagement of the workman was in a project work with a clear understanding that on completion of the project, the services of the workman would come to an end, and that the reference was barred by limitation.

2.2 The learned Tribunal below, after recording the evidence and hearing the parties, held that the respondent did not leave of his

own, but, in fact, he was removed from the service, juniors to the petitioner were retained in service and on the date of removal, the project was not complete and that delay would not adversely affect the rights of the present respondent-workman.

2.3 The learned Tribunal, accordingly, directed reinstatement of the respondent-workman with the benefits of continuity of service and also awarded payment of 75% of back-wages, including the increments and other consequential benefits.

3. Shri Mukesh Patel, learned Counsel for the petitioner, has raised the very same contentions before this Court. Those are that the respondent-workman left of his own, present was a project work and delay should have defeated the case of the workman.

4. Shri Hasmukh Thakker, learned Counsel for the respondent, on the other hand, submitted that in the proceedings under Article 227 of the Constitution of India, the findings recorded by the subordinate Tribunal cannot be set aside simply because yet another view is possible. In relation to the project work, his submission is that before completion of the project, if the petitioner was to be removed and it had come on the record that the petitioner had worked for more than 240 days, then, the provisions of Section 25-F of the Industrial Disputes Act, 1947 were

required to be observed. In relation to delay of fourteen years and award of back-wages at the rate of 75%, it was, however, submitted by Shri Thakker that looking to the delay in approaching the learned Industrial Tribunal, the Court must take a lenient view in favour of the workman.

5. So far as the question of the workman leaving the work of his own is concerned, the argument raised by Shri Patel should immediately be rejected in view of the positive findings recorded by the leaned Industrial Tribunal. In the proceedings under Article 227 of the Constitution of India, the High Court would not be entitled to substitute its findings on facts simply because yet another view is possible. The High Court would gain the jurisdiction to set aside the findings on facts if the High Court finds that the findings recorded by the subordinate Tribunal are perverse, that the evidence available on record has not been read or the evidence not available on record has been read or the findings are such, which no prudent person can record. In the present case, the learned Industrial Tribunal has relied upon one set of the oral evidence over the other and for coming to such a finding based on appreciation of the oral evidence, the learned Tribunal had jurisdiction. The argument raised by the petitioner is rejected.

6. The argument of Shri Patel relating to the project work should also be rejected simply on the ground that on the date of

termination/illegal retrenchment, the work was in progress and nothing has been brought on record that on what particular date, the work came to an end and whether in accordance with the policy of the Railways, the persons, who had worked for more than 240 days on any project work, are employed at any other site or are given some permanent post or were regularised or not. I can still understand the case if the workman was removed on completion of the project on the ground that it was a project appointment and the appointment would come to an end on end of the project.

7. So far as the question of delay is concerned, it is to be seen that the workman was removed on 29th December, 1982 and he approached the learned Industrial Tribunal somewhere in the year 1996; he has not properly explained as to why he could not approach the learned Industrial Tribunal immediately after his removal/retrenchment nor has he justified his inaction. The back-wages are not the alms, nor are the graces shown by the Courts. The back-wages are required to be paid to a person, who was ready and willing to join the service, but, was not allowed to join and would be allowed in favour of the person, who does not sleep over his rights for decades. In the present matter, in absence of proper justification in approaching the Industrial Tribunal after a period of fourteen years, I am unable to hold that the workman would be entitled to 75% of back-wages from the date of his removal

upto the date of reference. The said part of the award is hereby set aside and quashed. The award in relation to reinstatement is maintained with a further direction that from the date of the reference till the date of the final award, the respondent-workman would be entitled to 75% of back-wages and he would also be entitled to the benefits flowing from his service conditions, irrespective of non-grant of the back-wages.

8. The petition to the extent indicated above is allowed. Rule is made absolute. No costs.

[R.S.Garg, J.]

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